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Honorable Doug Cook
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Elections -Corporations - Polit-
ical Contributions

Provisions of Act 81-543 and 81-
860 which impose a \$500 limit on
corporate contributions to aid
or defeat an amendment are un-
constitutional.

Business corporation may not
place ads in its own name pro-
moting passage of a constitu-
tional amendment.

Business corporation is not re-
stricted in the amount of con-
tributions or dues which it may
contribute to a non-profit cor-
poration.

Dear Senator Cook:

I am responding to your request for an opinion of
October 27, 1981 regarding corporate contributions to aid or
defeat the passage of a constitutional amendment. You have
asked the following questions:

1. Section 2(7) of Act 81-860 seems to pro-
hibit business corporations from making
contributions only if the contributions
are made in order 'to defeat' questions
submitted to the vote of the people.

Other provisions of this Act and Act 81-543 seem to permit business corporations to contribute up to \$500 in order 'to aid or defeat' a question or proposition. What is the monetary limit, if any, that a business corporation may contribute to a political committee which is organized to support passage of an Amendment?

2. If more than one political committee is organized to support passage of an Amendment, how much may a business corporation contribute to each committee?
3. May a business corporation place ads in its own name urging passage of the constitutional amendment and, if so, is there any limitation on the amount the business corporation may expend for these advertisements?
4. Section 3 of Act 81-860 permits non-profit corporations to contribute funds in any amount in order to aid or defeat questions or propositions submitted for vote. Some non-profit corporations, such as trade associations, have members which are profit corporations and which pay dues to the association. May these profit corporations make contributions or dues payments to the association with the understanding that the funds will be used by the association as a contribution to a political committee supporting a specific Amendment? If so, is there any limitation on the amount of the payment that can be made by the profit corporation to the association?
5. If Acts 81-543 and 81-860 do impose a \$500 limitation on the amount that a business corporation may contribute to a political committee which supports passage of an Amendment, what is the effect upon these enactments of such recent court decisions as First National Bank of Boston vs. Bellotti, 435 U.S. 765 (1978); Buckley vs.

Valeo, 424 U.S. 1 (1976); Let's Help Florida vs. McCrary, 621 F. 2d 195 (5th Cir. 1980); C & C Plywood Corp. vs. Hanson, 583 F. 2d 421 (9th Cir. 1978)?

In response to your last question, Acts 81-543 and 81-860, in my opinion, do impose a \$500 limitation on the amount that a business corporation may contribute to a political committee for the purpose of supporting the passage of an amendment. However, that portion of those acts which impose the limitation are rendered unconstitutional by the cases which you have cited.

While there is a presumption that all acts are constitutional and while this office makes every effort to interpret the law in accordance with that presumption, in this instance the United States Court of Appeals for the Fifth Circuit has directly ruled on this issue in a manner that renders the limitation on corporate contributions in support of an amendment unconstitutional.

Recently, in Lets Help Florida vs. McCrary, 621 F. 2d 195 (5th Cir. 1980), the Fifth Circuit overturned a provision of a Florida statute which limited corporate contributions in support of, or in opposition to, an issue to be voted on in a statewide election, to \$3,000.

In so ruling, the Court cited the United States Supreme Court decision of First National Bank of Boston v. Bellotti, 435 U.S. 765, 98n S. Ct. 1407, 55 L. Ed. 2d 707 (1976) for the proposition that the state's interest in regulating contributions to candidates to prevent their actual or apparent corruption does not justify restrictions upon political contributions in referendum elections because the same risk of corruption does not exist.

The Court further held that the State's interest in promoting disclosure of campaign contributions was not a valid reason for restrictions on corporate contributions because there were other sections of the Florida Election Laws which would adequately promote disclosure by requiring political committees to file information about each contributor and contribution. Similarly, Alabama's election laws require such disclosure of contributions by political committees.

Therefore, it is my opinion that the Fifth Circuit opinion is controlling and that Alabama's statutory restrictions on corporate contributions to aid or defeat an amendment are unconstitutional.

I believe that this conclusion is dispositive of questions 1 and 2.

In answer to your third question, it is my opinion that a business corporation may not directly place an ad in its own name in support of an amendment. Section 17-22-3 of the Corrupt Practices Act, which expressly prohibits any corporate contributions whatsoever, has not been expressly repealed, but has been modified as provided in Acts 81-543 and 81-860. When construed in para materia, these laws express a legislative intent to maintain some control over corporate contributions and expenditures in political campaigns. Act 81-860, codified as §10-2A-70.2, Code of Alabama 1975, which is the latest expression of legislative intent, provides in pertinent part that

"...it shall be legal and permissible for any corporation, other than a public utility that is regulated by the public service commission, whether for profit or non-profit, incorporated under the laws of or doing business in this state, to directly give, pay, expend or contribute, any money or other valuable thing in any amount not to exceed \$500.00 to any one candidate or political party or political committee." [Emphasis added]

This section limits corporate contributions to candidates, political parties or political committees. While the \$500.00 limit on corporate contributions to aid or defeat an amendment, as stated earlier, is not a constitutionally permissible one, it is my opinion that the State may require a corporation to make its contributions or expenditures through a political committee in order to insure disclosure.

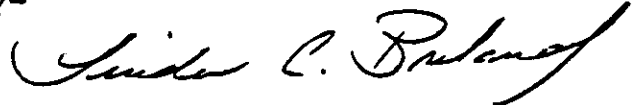
In response to your fourth question, I am not aware of any law which places restrictions on contributions or dues which a business corporation may contribute to a non-profit corporation. While I am of the opinion that a business corporation may specify that the dues are to be used for a

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specific purpose, I do not believe that the non-profit corporation would be bound to use the funds in the specified manner.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-

A handwritten signature in cursive script, appearing to read "Linda C. Breland".

LINDA C. BRELAND
Assistant Attorney General

LCB:bb